IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 708 of 1996

Between:

P. Mukunda Reddy S/o. China Ranga Reddy
R/o. Kattuvapalli Village, Manubole Mandal, Nellore Dist.

..... PETITIONER

AND

1 The Govt. of A.P. rep. by its Secretary, Animal Husbandry, Diary

Development and Fisheries Department,
Secretariat, Hyderabad.
2 The Commissioner of Fisheries, A.P.
Hyderabad.
3 The Assistant Director of Fisheries, A.P.,
Nellore District, Nellore.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the notice issued by the 3rd respondent in his proceedings No. 1411/BW/91 dt. 20-9-1995 directing the petitioner to pay the lease amount of Rs.40,000/- for the Fasli 1404 and 1405 for 4 hectares of land lease out to the petitioner notwithstanding the payment of lease amount by the petitioner as per the terms of the lease deed as illegal, arbitrary and violative of principles of natural justice and without any authority and set-aside the same.

Counsel for the Petitioner: MR.P.SRIDHAR REDDY

Counsel for the Respondents: GP FOR ANIMAL HUSBANDARY

The Court made the following :

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ORDER:

Heard both sides and at their request the main writ petition itself is taken up for disposal.

In this writ petition the petitioner seeks writ of Mandamus declaring the impugned notice dated 20-09-1995 issued by the 3rd respondent herein directing the petitioner for payment of Rs.40,000/- towards lease amount in the years Fasli 1404 and 1405 for 4 hectares of the lease hold, as bad, illegal, arbitrary and being contrary to the terms and conditions as contained in the lease agreement.

The case of the petitioner is that he being an unemployed technocrat, was selected by the Government of Andhra Pradesh for leasing out waste lands of the Government for the purpose of brackish water prawn culture in terms of the policy initiated by the Government for developing the waste land and also to provide self-employment to the unemployed. Accordingly, the petitioner was allotted plot No.3 to an extent of 4 hectares comprised in Sy.Nos.166 part, 168 part and 168/1 part, situated at Kattuvapalli Village, Manubole Mandal, Nellore District. Subsequently, lease deed was executed on 29-10-1991 between the Government and the petitioner. In terms thereof the petitioner has to pay annual lease of Rs.20/- per hectare for carrying on the said prawn culture. In fact, the possession was delivered to the petitioner in November, 1993, as evident from the letter dated 10-11-1993, which is duly signed by the petitioner and also the 3rd respondent. The project report was prepared in his favour by the Marine Products Export Development Authority, Regional Centre (prawn culture), Vijayawada, as per proceedings dated 18-03-1994. The Andhra Pradesh Pollution Control Board also given clearance certificate for establishing prawn farm. Thereafter by investing substantial amounts he commences cultivation of the prawn culture in the year 1994. However, in the first year he along with several others, including east-coast of our country suffered heavy losses due to devastation caused, as a result of the unknown virus decease.

Therefore, aforesaid authority has declared crop holiday and directed for stopping cultivation for one year. In terms of the said lease deed, the petitioner paid Rs.80/- for the year 1994-1995 by a demand draft dated 25-08-1994 and also further sum of Rs.80/- by a pay order dated 30-09-1995 towards the lease amount for the year 1995-1996 along with the covering letter dated 30-09-1995. However, surprisingly, the 3rd respondent issued proceedings dated 20-09-1995 calling upon the petitioner to pay a sum of Rs.40,000/- for the Fasli 1404 and 1405 corresponding to the years 1994-1995 and 1995-1996. According to the petitioner such an exorbitant demand is wholly unsustainable and not in terms of the deed. Hence, the Writ Petition.

In the Counter-affidavit filed by the respondents herein it is submitted that there is no dispute in regard to the allotment of the site to the petitioner for the purpose of developing prawn culture. However, the present impugned demand is only in terms of the G.O.Ms.No.74 AG & F (Fish-II) Department dated 28-04-1994, wherein the lease amount has been enhanced. Therefore, the petitioner is liable to pay the same. It is further pointed out that as per clause 6 in the lease agreement the Government has been vested with the power to make appropriate enhancement, which is binding on the petitioner and necessarily he has to pay. The aforesaid G.O. was issued only in exercise thereof. Hence, the petitioner cannot legally out of the said liability.

The learned Counsel appearing for the petitioner by placing reliance in clause 3 of the lease deed submitted that liability of the petitioner extends only to sum of Rs.20/- per hectare and therefore the present demand is against the said clause.

The claim of the petitioner was sought to be repelled by the learned Government Pleader appearing on behalf of the respondents herein contending that clause 3 as relied on by the petitioner is not the final one and there is sufficient reservations were made in favour of the Government under Clause 6 thereof for making proper enhancement and therefore G.O.Ms.No.74 AG & F (Fish-II) Department dated 28-04-1994 issued enhancing the lease amounts. Hence, there is no illegality.

Considering the submissions made and on perusal of the material the only question which crops up for consideration is, whether the impugned demand made by the 3rd respondent herein by way of notice dated 20-09-1995 is sustainable.

There is no dispute to the fact that in terms of the policy of the Government for

developing the waste land and also for upliftment of the unemployed the said site was given to the petitioner and accordingly a lease deed was executed between them. In terms there of, as provided for under Clause 3, lease amount is fixed at Rs.20/- per hectare. Therefore, the case of the petitioner is that he is liable to pay the same, but not the impugned demand as such. In the affidavit there is no reference, nor any explanation in regard to the enhancement made by the respondents herein in G.O.Ms.No.74 AG & F (Fish-II) Department dated 28-04-1994, nor there is any challenge made to the said G.O. In fact, the petitioner has totally pleaded unawareness of any such action and sought to payment only in terms of clause 3 of the agreement. As pointed out by the learned Government Pleader, in the very same lease deed, executed between the parties, the Clause 6 specifically contemplates that the Government reserve to themselves right to enhance the rent during the period of lease, if the fertility of the soil has increased or otherwise than the consequence of only improvements made by the lessee etc., Having regard to the same, case of the respondents is that it is only due to such variation and increase of the market value, the lease amount has been enhanced. Therefore, the petitioner is liable to pay the same. If any such enhancement is not sustainable either on law or on facts, the petitioner could have taken appropriate remedies under law.

Having regard to the nature of obligations existing between the parties in the aforesaid agreement, any such questions in regard to either enhancement or demand made thereunder cannot form part of any enquiry under Article 226 of the Constitution of India. Hence, I do not find any illegality much less any irregularity warranting interference by this Court in the impugned notice. There are no merits in the Writ Petition.

The Writ Petition is, accordingly, dismissed. No costs.

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B.PRAKASH RAO, J.

Dated 11-11-2004.

SKMR

To

1 The Secretary, Govt. of A.P., Animal Husbandry, Diary

Development and Fisheries Department,
Secretariat, Hyderabad.
2 The Commissioner of Fisheries, A.P.
Hyderabad.
3 The Assistant Director of Fisheries, A.P.,
Nellore District, Nellore.

4. 2CCs to G.P. for Animal Husbandry, High Court Buildings, Hyderabad,

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